

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 2593 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE A.L.DAVE

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO
2. To be referred to the Reporter or not? : NO
3. Whether Their Lordships wish to see the fair copy of the judgement? : NO
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO
5. Whether it is to be circulated to the Civil Judge? : NO

ASHOK REVATMAL AGRAWAL @ MARWADI

Versus

COMMISSIONER OF POLICE

Appearance:

MR RAJESH M AGRAWAL for Petitioner

MR HH PATEL, AGP, for Respondent No. 1, 2, 3

CORAM : MR.JUSTICE A.L.DAVE

Date of decision: 26/11/1999

ORAL JUDGEMENT

#. The petitioner came to be detained under the Gujarat Prevention of Anti-Social Activities Act, 1985 ('PASA Act' for short), by virtue of an order passed by Commissioner of Police, Ahmedabad City, Ahmedabad on 15th February, 1999 in exercise of powers under Section 3(1) of the PASA Act.

#. The grounds of detention indicate that four

offences under Bombay Prohibition Act were registered against the petitioner and statements of witnesses, whose identity has not been disclosed, involving the petitioner in two incidents that occurred on 10th January, 1999 and 14th January, 1999, which resulted into disruption of public order, were recorded. The detaining authority recorded a subjective satisfaction after verifying the statements of these witnesses for exercise of powers under Section 9(2) of the PASA Act. The authority also considered that less drastic remedy is not possible to be resorted to as they may not immediately prevent the petitioner from pursuing his illegal and anti-social activities. The authority also considered that the petitioner is released on bail by Court in two of the offences and he is in police custody in two of the offences registered against him. The authority considered that the petitioner may apply and secure bail and resume his anti-social activities and, therefore, detention under PASA Act is the only remedy which can be resorted to for immediately preventing him from pursuing his illegal and anti-social activities.

#. The petitioner has challenged the order of detention by this petition under Article 226 of the Constitution on various grounds. One of the grounds is that the detaining authority has not considered the less drastic remedy in the nature of resorting to cancellation of bail and, therefore, the subjective satisfaction arrived at by the detaining authority cannot be said to be genuine and would stand vitiated.

#. Ms. Banna Datta, learned advocate appearing for Mr. Agarwal, learned advocate for the petitioner, has pressed into service the above ground alone. She placed reliance on the decision of a Division Bench of this Court in Yunusbhai Hasanbhai Ganchi v. District Magistrate being Letters Patent Appeal No.1056 of 1999, decided on 15th September, 1999 and submitted that the petition may be allowed.

#. Mr. Patel, learned Assistant Government Pleader, appearing for the respondents, has submitted that the detaining authority has taken into consideration all relevant aspects while arriving at the subjective satisfaction and, therefore, the petition may be dismissed.

#. Keeping the rival side contentions in mind, the petition deserves to be allowed on the sole ground argued by Ms. Datta in light of the above referred decision of this Court. The detaining authority ought to have

considered and recorded the aspect of possibility of getting the bail cancelled and, thereafter, could have arrived at a subjective satisfaction that less drastic remedy in the nature of cancellation of bail may be of no virtue and detention was the only remedy available. Mr. Patel was at loss to show either from the order or from the grounds of detention any consideration given to this aspect by the detaining authority. This being so, the detention order suffers from the vice of non-application of mind and, therefore, deserves to be quashed and set aside.

#. In view of the above discussion, the petition is allowed. The order of detention dated 15th February, 1999, passed in respect of the petitioner-Ashok Revatmal Agrawal @ Marwadi is hereby quashed and set aside. The petitioner-detenu is ordered to be set at liberty forthwith, if not required in any other case. Rule is made absolute accordingly with no orders as to costs.

[A.L. DAVE, J.]

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